



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

June 7, 1996

Ms. Ylise Janssen  
Coordinator for Legal Services  
Corpus Christi Independent School District  
P.O. Drawer 110  
Corpus Christi, Texas 78403-0110

OR96-0910

Dear Ms. Janssen:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 40175.

The Corpus Christi Independent School District ("CCISD") received a request for "any and all documentation that was used during the selection process for the Agnes plumbing foreman position including all notes from the hiring committee" and "any guidelines that were given to the hiring committee or that the CCISD has in place for the hiring of the position of foreman." You have provided the requestor with much of the information responsive to the request but claim that the hiring committee members' notes on the "Plumbing Foreman Interview Questions" forms should be excepted from required public disclosure pursuant to sections 552.103 and 552.122 of the Government Code.

When asserting section 552.103(a), a governmental body must establish that the requested information relates to pending or reasonably anticipated litigation.<sup>1</sup> Thus, under section 552.103(a) a governmental body's burden is two-pronged. The

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<sup>1</sup>Section 552.103(a) excepts from required public disclosure information:

- (1) relating to litigation of a civil or criminal nature or settlement negotiations, to which the state or a political subdivision is or may be a party or to which an officer or employee of the state or a political subdivision, as a consequence of the person's office or employment, is or may be a party; and
- (2) that the attorney general or the attorney of the political subdivision has determined should be withheld from public inspection.

governmental body must establish that (1) litigation is either pending or reasonably anticipated and that (2) the requested information relates to that litigation. *See Heard v. Houston Post Co.*, 684 S.W.2d 210, 212 (Tex. App.--Houston [1st Dist.] 1984, writ ref'd n.r.e.); Open Records Decision No. 551 (1990) at 4.

To establish that litigation is reasonably anticipated, a governmental body must provide this office "concrete evidence showing that the claim that litigation may ensue is more than mere conjecture." Open Records Decision No. 452 (1986) at 4. Concrete evidence to support a claim that litigation is reasonably anticipated may include, for example, the governmental body's receipt of a letter containing a specific threat to sue the governmental body from an attorney for a potential opposing party.<sup>2</sup> Open Records Decision No. 555 (1990); *see* Open Records Decision No. 518 (1989) at 5 (litigation must be "realistically contemplated"). On the other hand, this office has determined that if an individual publicly threatens to bring suit against a governmental body, but does not actually take objective steps toward filing suit, litigation is not reasonably anticipated. *See* Open Records Decision No. 331 (1982). Nor does the mere fact that an individual hires an attorney and alleges damages serve to establish that litigation is reasonably anticipated. Open Records Decision No. 361 (1983) at 2. Whether litigation is reasonably anticipated must be determined on a case-by-case basis. Open Records Decision No. 452 (1986) at 4.

You claim that litigation is reasonably anticipated because the requestor is assisting one of the finalists for the foreman position in an administrative grievance filed against one of the committee members. You state that the grievance procedure has historically been used "to gain free discovery in order to build a case for the courthouse." You also submitted documentation showing that a grievance hearing was scheduled to be held on February 19, 1996. However, the request for information was submitted to CCISD on April 9, 1996. Thus, this office has no way of determining the status of the grievance. *See* Open Records Decision No. 638 (1996) at 3 (act requires governmental body raising section 552.103(a) to provide this office with information about new and significant developments concerning anticipated litigation). We conclude that you have failed to make the requisite showing that litigation is reasonably anticipated and, therefore, you may not rely upon section 552.103 to withhold the requested information.

You further contend that the information at issue is excepted from disclosure pursuant to section 552.122 of the Government Code. Section 552.122 excepts from disclosure a "test item" developed by a governmental body. In Open Records Decision No. 626 (1994) at 6, this office determined that the term "test item" in section 552.122

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<sup>2</sup>In addition, this office has concluded that litigation was reasonably anticipated when the potential opposing party took the following objective steps toward litigation: filed a complaint with the Equal Employment Opportunity Commission, *see* Open Records Decision No. 336 (1982); hired an attorney who made a demand for disputed payments and threatened to sue if the payments were not made promptly, *see* Open Records Decision No. 346 (1982); and threatened to sue on several occasions and hired an attorney, *see* Open Records Decision No. 288 (1981).

"includes any standard means by which an individual's or group's knowledge or ability in a particular area is evaluated." You seek to withhold from disclosure the "Plumbing Foreman Interview Questions" forms which contain the notes made by the hiring committee members. While the interview questions may be "test items" for the purposes of section 552.122, we note that you have already provided the requestor with these questions on April 16, 1996. We therefore conclude that section 552.122 is inapplicable to the requested information. The information must be released to the requestor in its entirety.

We are resolving this matter with this informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and may not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,

A handwritten signature in black ink, appearing to read "Todd Reese", with a long horizontal flourish extending to the right.

Todd Reese  
Assistant Attorney General  
Open Records Division

RTR/rho

Ref: ID# 40175

Enclosures: Submitted documents

cc: Ms. Susie Luna-Saldana  
American Federation of Teachers  
P.O. Box 7011  
Corpus Christi, Texas 78467-7011  
(w/o enclosures)